



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix B

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2013 LRB-3660 (For: Rep. Born)

has been copied/added to the drafting file for

2013 LRB-3993 (For: Rep. Born)

Are These "Companion Bills" ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 01/16/2014 (Per: ARG)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2013 DRAFTING REQUEST

Bill

Received: **11/18/2013** Received By: **agary**
Wanted: **As time permits** Same as LRB:
For: **Mark Born (608) 266-2540** By/Representing: **John Cronin**
May Contact: Drafter: **agary**
Subject: **Fin. Inst. - WCA** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **Rep.Born@legis.wisconsin.gov**
Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Acceleration, cure period, after default under the consumer act

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 12/4/2013			_____			
/P1	agary 1/6/2014	kfollett 12/9/2013	rschlue 12/9/2013	_____	mbarman 12/9/2013		
/P2	agary 1/15/2014	kfollett 1/8/2014	rschlue 1/9/2014	_____	srose 1/9/2014		
/P3		kfollett	jmurphy	_____	lparisi		

LRB-3660

1/16/2014 10:04:42 AM

Page 2

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		1/15/2014	1/16/2014	_____	1/16/2014		

FE Sent For:

<END>

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/?	agary 12/4/2013			_____			
/P1	agary 1/6/2014	kfollett 12/9/2013	rschluct 12/9/2013	_____	mbarman 12/9/2013		
/P2		kfollett 1/8/2014	rschluct 1/9/2014	_____	srose 1/9/2014		

1/P3/5f 1/P3/5f jmsf
1/15 1/15 1/15

LRB-3660

1/9/2014 9:53:49 AM

Page 2

FE Sent For:

<END>

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/?	agary 12/4/2013						
/P1		kfollett 12/9/2013	rschluct 12/9/2013		mbarman 12/9/2013		
FE Sent For:							

11/21/13 11/21/13 11/21/13
 11/8 11/8 11/8
 <END>

2013 DRAFTING REQUEST**Bill**

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By/Representing: John Cronin

May Contact:

Drafter: agary

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Acceleration, cure period, after default under the consumer act ✓

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/? agary

1/15/14

12/9

agary

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FE Sent For:

<END>

Gary, Aaron

From: Cronin, John
Sent: Monday, November 18, 2013 10:04 AM
To: Gary, Aaron
Subject: Drafting requests
Attachments: 425.109 fix.pdf; 425.105 fix.pdf

Hi Aaron,

On behalf of Rep. Born, I need you to draft two bills to amend Chapter 425. Please do them as P-Drafts to start.

~~Bill #1 would amend 425.109 relating to pleading requirements. Please have the bill draft reflect the changes shown in the first attachment.~~

Bill #2 would amend 425.105. Please have the bill draft reflect the changes shown in the second attachment.

John Cronin
Office of Rep. Mark Born
39th Assembly District

425.105 Cure of default.

(1) With respect to a transaction other than one pursuant to an open-end plan involving a credit card, a ★ merchant may not accelerate the maturity of a consumer credit transaction, commence any action except as provided in s. 425.205 (6), or demand or take possession of collateral or goods subject to a consumer lease other than by accepting a voluntary surrender thereof (s. 425.204), unless the merchant believes the customer to be in default (s. 425.103), and then only upon the expiration of 15 days after a notice is given pursuant to s. 425.104 if the customer has the right to cure under this section.

(2) Except as provided in subs. (3) and (3m), for 15 days after such notice is given, a customer may cure a default under a consumer credit transaction by tendering the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges, and by tendering performance necessary to cure any default other than nonpayment of amounts due. The act of curing a default restores to the customer the customer's rights under the agreement as though no default had occurred.

(3) A right to cure shall not exist if the following occurred twice during the preceding 12 months:

(a) The customer was in default on the same transaction or open-end credit plan;

(b) The creditor gave the customer notice of the right to cure such previous default in accordance with s. 425.104; and

(c) The customer cured the previous default.

(3m) A right to cure shall not exist with respect to a default specified under s. 425.103 (2) (bm).

(4) With respect to consumer credit transactions in which the creditor has a security interest in, and possession of, instruments or documents, as each is defined in s. 409.102 (1), which threaten to decline speedily in value, this section does not restrict the creditor's rights to dispose of such property pursuant to subch. VI of ch. 409 and the terms of the creditor's security agreement.

Gary, Aaron

From: Cronin, John
Sent: Tuesday, December 03, 2013 5:10 PM
To: Gary, Aaron
Subject: RE: Drafting requests
Attachments: 425.109 Amendment Position Statement.pdf; 425.105 Amendment Position Statement.pdf

Hi Aaron,

I have attached two documents that provide the rationale behind the changes to 425.105 and 425.109.

The purpose of the change to 425.105 is to avoid a conflict with the National Banking Act and ensure we are remaining consistent with applicable federal regulations. The purpose of the 425.109 change is to provide more clarity in lawsuits aimed at collecting consumer credit debt.

Thanks again for your help on this. Email me back if you have additional questions.

John Cronin
Office of Rep. Mark Born
39th Assembly District

From: Gary, Aaron
Sent: Tuesday, December 03, 2013 4:04 PM
To: Cronin, John
Subject: RE: Drafting requests

Hi John,

I am working on the change to s. 425.105. There are a number of other statutory provisions that may be relevant here (see, e.g., s. 425.103 (1)), but it is hard for me to know without knowing exactly what your intent is in making this change. Can you tell me what the intent is for this bill? On its face, the language suggests that a credit card issuer may accelerate the maturity date and/or bring an action regardless of whether the customer/card holder is in default or has had an opportunity to cure. Can you please describe for me what you intend the effect of this bill to be?

I have a similar question regarding the changes to s. 425.109. What is the intent in changing "creditor" to "merchant" in this provision? The two terms seem to be used interchangeably in ch. 425 and each definition uses the other term. See s. 421.301 (16) and (25). So I am trying to figure out what substantive effect this is intended to have. Can you shed any light on that?

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Cronin, John
Sent: Monday, November 18, 2013 10:04 AM
To: Gary, Aaron
Subject: Drafting requests

Position on Proposed Statutory Amendment to Wisconsin Statutes Section 425.105

Purpose of proposed amendment: The purpose of the amendment is to avoid direct conflict with the National Banking Act, which regulates federally chartered banks that issue credit cards on a national scale. Sections 425.104 and 425.105 are preempted by federal law to the extent that they attempt to regulate national banks and their ability to accelerate the balance due on a credit card account, and should be amended.

History: The National Banking Act of 1863 and the National Bank Act of 1864 ("NBA") established a federally chartered banking system. Through the NBA, Congress granted national banks broad authority to exercise "all such incidental powers as necessary to carry on the business of banking." To oversee the system, Congress created a federal agency within the Department of the Treasury called the Office of the Comptroller of the Currency ("OCC"). The NBA gives the OCC the power to examine, supervise, and regulate all national banks and to protect national banks from what the OCC describes as "potentially hostile state interference."

Bank Activities and Operations; Real Estate Lending and Appraisals, 68 Fed Reg. 46, 119 (2003).

In January 2004, the OCC issued 12 C.F.R. § 7.4008 to clarify the applicability of state law to national banks' non-real estate lending activities. 69 Fed. Reg. at 1905. The regulation sets forth a general preemption test and specific types of state laws preempted by the NBA. The regulation provides, in pertinent part:

(1) Except where made applicable by federal law, state laws that obstruct, impair, or condition a national bank's ability to fully-exercise its federally authorized non-real estate lending powers are not applicable to national banks.

(2) A national bank may make non-real estate loans without regard to state-law limitations concerning:

•••

(iv) The terms of credit, including the schedule for repayment of principle and interest, amortization of loans, balance, payments due, minimum payments, *or term to maturity of the loan, including the circumstances under which a loan may be called due and payable upon passage of time or a specified event external to the loan;*

12 C.F.R. § 7.4008(d)(emphasis added).

The OCC regulation cited above says that state laws concerning the schedule for repayment and/or concerning the circumstances under which a loan may be called due and payable do not apply to national banks. Sections 425.104 and 425.105 of the WCA attempt to regulate activity which is *expressly* preempted by federal law and should be amended to remain consistent with applicable federal regulations.

Current version of 425.105: The current version of Wis. Stat. Sec. 425.105 encompasses all open and closed ended loans.

"A merchant may not accelerate the maturity of a consumer credit transaction, commence any action except as provided in s. 425.205 (6), or demand or take possession of collateral or goods subject to a consumer lease other than by accepting a voluntary surrender thereof (s. 425.204), unless the merchant believes the customer to be in default (s. 425.103), and then only upon the expiration of 15 days after a notice is given pursuant to s. 425.104 if the customer has the right to cure under this section."

Benefit of proposed amendment: The proposed amendment does not change the 15 day notice requirement for closed ended loans, and open ended loans that do not involve a credit card. It simply clarifies that it does not apply to open ended credit card accounts.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3660/P1

ARG:...

12/4

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

Gen

- 1 AN ACT ...; relating to: acceleration of certain obligations under the Wisconsin
- 2 Consumer Act.

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed. A merchant is defined to include, among others, a creditor or a seller of property on credit. A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes. A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons. A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan. An open-end credit plan means consumer credit extended on an account for which: the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card or other device; the customer has the choice of paying the balance in full or in installments; a finance charge may be imposed by the creditor on the outstanding unpaid balance; and the creditor has treated the transaction as open-end consumer credit for purposes of disclosures required under the federal Consumer Credit Protection Act.

Under current law, the WCA includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction. A creditor's cause of action with respect to a customer's obligation in a consumer credit transaction does not accrue unless there is a default by the customer. A default occurs upon the happening of certain events, including the failure to make payments within specified times. For an open-end credit plan, default occurs with the failure to pay when due on two occasions within any 12-month period. If a merchant believes that a customer is in default, the merchant may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure the default. This notice of default must contain specified information, including identification of the creditor and the consumer credit transaction, a statement of the nature of the alleged default, and a clear statement of the total payment needed to cure the default and date by which the payment must be made.

Under current law, with limited exceptions, for 15 days after a notice of default is given to the customer, the customer may cure the default by paying the outstanding amount due, without acceleration, plus other charges owed or, if the default does not arise from nonpayment, by tendering any other performance required. The act of curing a default restores the customer's rights as though no default had occurred. Under one exception to the right to cure, a customer does not have a right to cure a default if, during the preceding 12 months, the customer twice cured defaults on the same transaction or open-end credit plan. Unless a merchant believes a customer is in default and, if the customer has a right to cure the default, at least 15 days have elapsed since the merchant gave the customer notice of the default, the merchant may not do any of the following: 1) accelerate the maturity of a consumer credit transaction; 2) with a limited exception, commence any action; or 3) demand or take possession of collateral unless it is voluntarily surrendered.

This bill creates an exception to item 1), above, that a merchant generally may not accelerate the maturity of a consumer credit transaction for at least 15 days after the merchant has given the customer notice of default. The bill creates an exception to this prohibition for consumer credit transactions pursuant to open-end credit plans involving credit cards issued by national banks. The bill also allows the payment amount required to cure a default or redeem collateral, with respect to a consumer credit transaction pursuant to an open-end credit plan involving a credit card issued by a national bank, to reflect an accelerated maturity date.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 425.105 (1) of the statutes is renumbered 425.105 (1) (a) and
2 amended to read:
3 425.105 (1) (a) ~~A- With respect to a consumer credit transaction,~~ a merchant
4 may not accelerate the maturity of a consumer credit transaction, commence any

1 action except as provided in s. 425.205 (6), or demand or take possession of collateral
2 or goods subject to a consumer lease other than by accepting a voluntary surrender
3 thereof (s. 425.204), unless the merchant believes the customer to be in default (s.
4 425.103), and then only upon the expiration of 15 days after a notice is given
5 pursuant to s. 425.104 if the customer has the right to cure under this section.

History: 1971 c. 239; 1975 c. 407, 421; 1991 a. 316; 2001 a. 10; 2005 a. 110. ✓

6 **SECTION 2.** 425.105 (1) (b) of the statutes is created to read:

7 425.105 (1) (b) A merchant may not accelerate the maturity of a consumer
8 credit transaction unless the merchant believes the customer to be in default (s.
9 425.103), and then only upon the expiration of 15 days after a notice is given
10 pursuant to s. 425.104 if the customer has the right to cure under this section. This
11 paragraph does not apply to a consumer credit transaction pursuant to an open-end
12 credit plan involving a credit card issued by a national bank.

13 **SECTION 3.** 425.105 (2) of the statutes is amended to read: ✓

14 425.105 (2) Except as provided in subs. (3) and (3m), for 15 days after such
15 notice is given, a customer may cure a default under a consumer credit transaction
16 by tendering the amount of all unpaid installments due at the time of the tender,
17 without acceleration unless the consumer credit transaction is pursuant to an
18 open-end credit plan involving a credit card issued by a national bank, plus any ✓
19 unpaid delinquency or deferral charges, and by tendering performance necessary to
20 cure any default other than nonpayment of amounts due. The act of curing a default
21 restores to the customer the customer's rights under the agreement as though no
22 default had occurred.

History: 1971 c. 239; 1975 c. 407, 421; 1991 a. 316; 2001 a. 10; 2005 a. 110. ✓

23 **SECTION 4.** 425.208 (1) (a) of the statutes is amended to read:

1 425.208 (1) (a) The total of all unpaid amounts, including any unpaid
2 delinquency or deferral charges due at the time of tender, without acceleration
3 unless the transaction is pursuant to an open-end credit plan involving a credit card
4 issued by a national bank; plus

5 History: 1971 c. 239; 1979 c. 10, 89; 1983 a. 389; 1991 a. 316; 1997 a. 302; 1999 a. 85; 2001 a. 10.

(END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3660/P1dn
ARG:...

Date

ATTN: John Cronin

Please review the attached draft carefully to ensure that it is consistent with your intent. The text of the draft is significantly different from the proposed text provided to me because the proposed text was not consistent with the explanation that was also provided to me in the position statement. The proposed text appeared significantly overbroad in two respects. First, it would have created an exception to all of s. 425.105 (1), not just the acceleration language. The explanation of the proposed change suggested that the intent was to override the acceleration language in s. 425.105 (1), not to override the language requiring a default and expiration of the cure period before suit may be brought. Second, the rationale for the change was the preemptive effect of federal law when credit cards are issued by national banks. However, the proposed text was not limited to credit cards issued by national banks. For these reasons, I have modified the proposed text in an effort to match the intent explained in the position statement. If I have mistaken your intent and your intent is to modify provisions relating to the right to cure and the time when a lawsuit may be filed, additional statutory provisions not included in this draft will also need to be treated.

As discussed above, the rationale for this bill is that Wisconsin statutes are clearly preempted by federal law. If this is the case, the changes in this bill to reconcile these statutes with federal law will have no substantive effect, as preemption means that these statutes are already unenforceable to the extent that they conflict with federal law.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3660/P1dn
ARG:kjfrs

December 9, 2013

ATTN: John Cronin

Please review the attached draft carefully to ensure that it is consistent with your intent. The text of the draft is significantly different from the proposed text provided to me because the proposed text was not consistent with the explanation that was also provided to me in the position statement. The proposed text appeared significantly overbroad in two respects. First, it would have created an exception to all of s. 425.105 (1), not just the acceleration language. The explanation of the proposed change suggested that the intent was to override the acceleration language in s. 425.105 (1), not to override the language requiring a default and expiration of the cure period before suit may be brought. Second, the rationale for the change was the preemptive effect of federal law when credit cards are issued by national banks. However, the proposed text was not limited to credit cards issued by national banks. For these reasons, I have modified the proposed text in an effort to match the intent explained in the position statement. If I have mistaken your intent and your intent is to modify provisions relating to the right to cure and the time when a lawsuit may be filed, additional statutory provisions not included in this draft will also need to be treated.

As discussed above, the rationale for this bill is that Wisconsin statutes are clearly preempted by federal law. If this is the case, the changes in this bill to reconcile these statutes with federal law will have no substantive effect, as preemption means that these statutes are already unenforceable to the extent that they conflict with federal law.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Cronin, John
Sent: Wednesday, December 11, 2013 2:45 PM
To: Gary, Aaron
Subject: RE: Drafting requests

Hi Aaron,

We are all set for 3:00PM on Wednesday, December 18th. The meeting will be in Rep. Born's office – 312 North.

Thanks,

John Cronin
Office of Rep. Mark Born
39th Assembly District

From: Gary, Aaron
Sent: Tuesday, December 10, 2013 2:50 PM
To: Cronin, John
Subject: RE: Drafting requests

Hi John,

I am available at 3:00 pm on Wed. 12/18. I should note that the other draft (LRB-3659) is in editing and you should have it before that date. If that draft will also need changes, it might be easiest to try to do them both at the same time.

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Cronin, John
Sent: Tuesday, December 10, 2013 11:51 AM
To: Gary, Aaron
Subject: RE: Drafting requests

Hi Aaron,

Would you be able to come over next week and meet with Rep. Born and some stakeholders to discuss changes to 3660/P1? 3:00PM on Wednesday, December 18th would be optimal but the 19th is also open if that would be better. Let me know what works best for you.

Thanks,

John Cronin
Office of Rep. Mark Born
39th Assembly District

Gary, Aaron

From: Cronin, John
Sent: Friday, December 20, 2013 9:21 AM
To: Gary, Aaron
Subject: 425.109 and 425.105 proposed changes

Hi Aaron,

Thanks again for taking the time to meet with us on Wednesday. I have received the updated language based on what we discussed and it is included below. The proposed changes are underlined. Let me know if you have additional questions or if anything needs to be clarified. Merry Christmas!

John Cronin
Office of Rep. Mark Born
39th Assembly District

~~425.109 -~~

~~As requested, we came up with the following definition for "billing statement."~~

~~That being: "a statement issued pursuant to 15 U.S.C. 1637."~~

~~This will require two changes to the draft. The phrase "issued by the merchant and" should be removed from lines 11-12 in section 3 and from lines 14-15 under section 6.~~

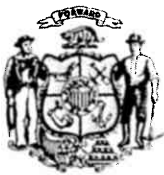
~~Further, we all agreed to add "at the time it was issued" in two places. The first being on page two of the analysis in the second paragraph after "on the customer's account." Also, in the statute in Section 6, line 16.~~

425.105 -

Add back in the portion of Section 1 that was stricken on line 4, and strike lines 6-10 on page two - as was discussed at the meeting. The last word in line 10, and lines 11 and 12 on page two would stay – which was also discussed. Below is our reasoning.

I think we were all on the same page at the meeting that the National Banking Act (NBA) allows national banks to establish when there can be an acceleration of the balance with regard to a credit card account issued by a national bank- and that pre-empts the state law right to cure requirement with regard to national banks. Therefore, national banks should not be required to send a right to cure before accelerating a credit card debt.

Aaron was concerned that we did not provide specific law with regard to where in the NBA does it regulate when national banks have the right to commence an action to recover money owed (i.e. sue). Our review of the National Banking Act found no such regulation over that aspect. However, we do not believe that it is necessary for the following reason. In practice, if the balance has been legally accelerated by the bank there is no longer a right to cure. See *Rosendale State Bank v Schultz*, 123 Wis. 2d 195 (1985). As explained in the *Rosendale*, if the obligation is entirely past due and owing (which it would be if it was already legally accelerated), then there is no right to cure and therefore the notice is not required. So the existing language Aaron came up with on page two lines 10-12 works for the intended purpose, which is to exempt national banks from the requirements in that section due to pre-emption.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3660/E1 PZ

ARG:kjfrs

(RMR)

in 1/6
noted
by 1/9

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

8-note

- and actions upon,
- Regen
- 1 AN ACT *to renumber and amend* 425.105 (1); *to amend* 425.105 (2) and
 - 2 425.208 (1) (a); and *to create* 425.105 (1) (b) of the statutes; **relating to:**
 - 3 acceleration of certain obligations under the Wisconsin Consumer Act.

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed. A merchant is defined to include, among others, a creditor or a seller of property on credit. A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes. A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons. A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan. An open-end credit plan means consumer credit extended on an account for which: the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card or other device; the customer has the choice of paying the balance in full or in installments; a finance charge may be imposed by the creditor on the outstanding unpaid balance; and the creditor has treated the transaction as open-end consumer credit for purposes of disclosures required under the federal Consumer Credit Protection Act.

Under current law, the WCA includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction. A creditor's cause of action with respect to a customer's obligation in a consumer credit transaction does not accrue unless there is a default by the customer. A default occurs upon the happening of certain events, including the failure to make payments within specified times. For an open-end credit plan, default occurs with the failure to pay when due on two occasions within any 12-month period. If a merchant believes that a customer is in default, the merchant may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure the default. This notice of default must contain specified information, including identification of the creditor and the consumer credit transaction, a statement of the nature of the alleged default, and a clear statement of the total payment needed to cure the default and date by which the payment must be made.

Under current law, with limited exceptions, for 15 days after a notice of default is given to the customer, the customer may cure the default by paying the outstanding amount due, without acceleration, plus other charges owed or, if the default does not arise from nonpayment, by tendering any other performance required. The act of curing a default restores the customer's rights as though no default had occurred. Under one exception to the right to cure, a customer does not have a right to cure a default if, during the preceding 12 months, the customer twice cured defaults on the same transaction or open-end credit plan. Unless a merchant believes a customer is in default and, if the customer has a right to cure the default, at least 15 days have elapsed since the merchant gave the customer notice of the default, the merchant may not do any of the following: 1) accelerate the maturity of a consumer credit transaction; 2) with a limited exception, commence any action; or 3) demand or take possession of collateral unless it is voluntarily surrendered.

*insert
ANAL* → This bill creates an exception to item 1), above, that a merchant generally may not accelerate the maturity of a consumer credit transaction for at least 15 days after the merchant has given the customer notice of default. The bill creates an exception to this prohibition for consumer credit transactions pursuant to open-end credit plans involving credit cards issued by national banks. The bill also allows the payment amount required to cure a default or redeem collateral, with respect to a consumer credit transaction pursuant to an open-end credit plan involving a credit card issued by a national bank, to reflect an accelerated maturity date.

*change
number 1* The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 425.105 (1) of the statutes is renumbered 425.105 (1) (a) and
amended to read: *Subject to c. 425.103 (1),*

425.105 (1) (a) A With respect to a consumer credit transaction, a merchant
may not accelerate the maturity of a consumer credit transaction, commence any

plain

1 action except as provided in s. 425.205 (6), or demand or take possession of collateral
2 or goods subject to a consumer lease other than by accepting a voluntary surrender
3 thereof (s. 425.204), unless the merchant believes the customer to be in default (s.
4 425.103), and then only upon the expiration of 15 days after a notice is given
5 pursuant to s. 425.104 if the customer has the right to cure under this section.

6 **SECTION 2.** 425.105 (1) (b) of the statutes is created to read:

7 425.105 (1) (b) A merchant may not accelerate the maturity of a consumer
8 credit transaction unless the merchant believes the customer to be in default (s.
9 425.103), and then only upon the expiration of 15 days after a notice is given
10 pursuant to s. 425.104 if the customer has the right to cure under this section. This

11 ~~paragraph~~ does not apply to a consumer credit transaction pursuant to an open-end
12 credit plan involving a credit card issued by a national bank.

13 **SECTION 3.** 425.105 (2) of the statutes is amended to read:

14 425.105 (2) Except as provided in subs. (3) and (3m), for 15 days after such
15 notice is given, a customer may cure a default under a consumer credit transaction
16 by tendering the amount of all unpaid installments due at the time of the tender,
17 without acceleration unless the consumer credit transaction is pursuant to an
18 open-end credit plan involving a credit card issued by a national bank, plus any
19 unpaid delinquency or deferral charges, and by tendering performance necessary to
20 cure any default other than nonpayment of amounts due. The act of curing a default
21 restores to the customer the customer's rights under the agreement as though no
22 default had occurred.

23 **SECTION 4.** 425.208 (1) (a) of the statutes is amended to read:

24 425.208 (1) (a) The total of all unpaid amounts, including any unpaid
25 delinquency or deferral charges due at the time of tender, without acceleration

1 unless the transaction is pursuant to an open-end credit plan involving a credit card

2 issued by a national bank; plus

3 (END)

D-Not

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3660/P2ins
ARG:.....

1

2 **INSERT ANAL:**

 This bill creates an exception to items 1) to 3), above, for consumer credit transactions pursuant to open-end credit plans involving credit cards issued by national banks. For these transactions, a cause of action against the customer still accrues only upon default by the customer, but there is no requirement that the merchant believe the customer to be in default or give the customer notice and a 15-day opportunity to cure the default before the merchant accelerates the maturity of a consumer credit transaction, commences an action, or demands or takes possession of collateral. The bill does not otherwise change the various restrictions on when a merchant can take possession of collateral.

3

4 **INSERT 3-16:**

5 425.105 (2) Except as provided in subs. (3) and (3m), for 15 days after such
6 notice is given, a customer may cure a default under a consumer credit transaction
7 by tendering the amount of all unpaid installments due at the time of the tender,
8 without acceleration, plus any unpaid delinquency or deferral charges, and by
9 tendering performance necessary to cure any default other than nonpayment of
10 amounts due. The act of curing a default restores to the customer the customer's
11 rights under the agreement as though no default had occurred. This subsection does
12 not apply to a consumer credit transaction pursuant to an open-end credit plan
13 involving a credit card issued by a national bank.

History: 1971 c. 239; 1975 c. 407, 421; 1991 a. 316; 2001 a. 10; 2005 a. 110.

14 **SECTION 1.** 425.203 (1) of the statutes is amended to read:

15 425.203 (1) At any time after default (s. 425.103) and, except with respect to
16 a consumer credit transaction pursuant to an open-end credit plan involving a credit
17 card issued by a national bank, after the expiration of the period for cure of default
18 (s. 425.105), if applicable, a merchant may commence an action to recover collateral

1 or goods subject to a consumer lease pursuant to s. 425.205, or reduce the claim to
2 a judgment by any available judicial procedure.

History: 1971 c. 239; 1975 c. 407, 421; 2001 a. 10. ✓

3 **SECTION 2.** 425.205 (6) of the statutes is amended to read:

4 425.205 (6) Action pursuant to this section may be commenced at any time after
5 the customer is in default, but, except with respect to a consumer credit transaction
6 pursuant to an open-end credit plan involving a credit card issued by a national
7 bank, the return day of process may not be set prior to the expiration of the period
8 for cure of the default by the customer (s. 425.105), if applicable. ✓

History: 1971 c. 239; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 407, 421; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (16); 1981 c. 317; 1981 c. 391 s. 210; 1983 a. 389;
1989 a. 31; 1993 a. 246; 1997 a. 250; 2005 a. 255.

9
10

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3660/P2dn

ARG:...

Date

Please review the attached draft carefully to ensure that it is consistent with your intent.

The requested changes expand the scope of the bill as compared to the "P1" draft, so other statutory provisions become relevant. Under s. 425.103 (1), a default must occur before a cause of action accrues against the customer. I have not treated this provision based on the assumption that a default should remain a prerequisite to a cause of action against the customer but the customer should no longer have a right to cure the default after it occurs. In addition to s. 425.103 (1), this issue is also relevant to 425.203 (1) and 425.205 (6). Please advise if I have mistaken your intent with respect to ss. 425.103 (1), 425.203 (1), and 425.205 (6).

Also, there was another way that I could have drafted the treatments of ss. 425.105 (2), 425.203 (1), and 425.205 (6) in this draft. I could have created s. 425.105 (3g) to read: "A right to cure shall not exist with respect to a consumer credit transaction pursuant to an open-end credit plan involving a credit card issued by a national bank." Creating this provision would eliminate the need to treat ss. 425.203 (1) and 425.205 (6) and would allow a treatment of s. 425.105 (2) to simply include a cross-reference to this new sub. (3g). Please let me know if you prefer this approach.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3660/P2dn
ARG:kjfrs

January 8, 2014

Please review the attached draft carefully to ensure that it is consistent with your intent.

The requested changes expand the scope of the bill as compared to the "/P1" draft, so other statutory provisions become relevant. Under s. 425.103 (1), a default must occur before a cause of action accrues against the customer. I have not treated this provision based on the assumption that a default should remain a prerequisite to a cause of action against the customer but the customer should no longer have a right to cure the default after it occurs. In addition to s. 425.103 (1), this issue is also relevant to 425.203 (1) and 425.205 (6). Please advise if I have mistaken your intent with respect to ss. 425.103 (1), 425.203 (1), and 425.205 (6).

Also, there was another way that I could have drafted the treatments of ss. 425.105 (2), 425.203 (1), and 425.205 (6) in this draft. I could have created s. 425.105 (3g) to read: "A right to cure shall not exist with respect to a consumer credit transaction pursuant to an open-end credit plan involving a credit card issued by a national bank." Creating this provision would eliminate the need to treat ss. 425.203 (1) and 425.205 (6) and would allow a treatment of s. 425.105 (2) to simply include a cross-reference to this new sub. (3g). Please let me know if you prefer this approach.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Cronin, John
Sent: Tuesday, January 14, 2014 6:21 PM
To: Gary, Aaron
Subject: Meeting tomorrow

Aaron,

In light of our meeting tomorrow, I have some updated information that I wanted to pass along. This should make things a little easier for our discussion of LRB 3660/P2.

- Re: No changes to 425.103 – We are on the same page as you.
- Re: Creating 425.105(3g) – We like this alternative idea. There may be a little discussion as to how your alternative affects 425.105(1) & (2)
- We would still like to discuss 425.203(1), 425.205(6), and 425.208(1)(a).

Thanks,

John Cronin
Office of Rep. Mark Born
39th Assembly District

1/15 mtg. per d-note
CR 425.105(3g) – everything else
can be removed
also can't combine bill
ASAP

From: Cronin, John
Sent: Tuesday, January 14, 2014 12:40 PM
To: Gary, Aaron
Subject: RE: Meeting tomorrow

Excellent, thank you. The purpose of the meeting will be to get some follow-up clarification from you on the items in the first paragraph of the drafter's note and to walk us through the possible creation of s.425.105(3g) that you mentioned in the second paragraph. Additionally, the stakeholders had a suggestion that I have included below. It would be great if you could shed a little bit of light on it tomorrow. Lastly, there may be a question about s.425.208.

Thanks again and we will see you tomorrow at 11:00AM.

John Cronin
Office of Rep. Mark Born
39th Assembly District

Suggestion: We may want to define national bank for section 425.105 only. This would be very similar to what we just did with the 425.109 bill to define billing statement. We could simply define National Bank for purposes of 425.105 only as "a federally chartered bank regulated by the National Bank Act, 12 USC 38." We just want to avoid any confusion over what constitutes a national bank.

From: Gary, Aaron
Sent: Tuesday, January 14, 2014 11:57 AM
To: Cronin, John
Subject: RE: Meeting tomorrow

no, don't need "national bank"
not defined anywhere else in
stat¹ (20-53 d.m.) except to limit
term

Yes, I'm available. Aaron

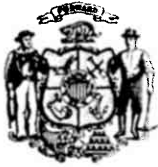
From: Cronin, John
Sent: Tuesday, January 14, 2014 10:34 AM
To: Gary, Aaron
Subject: Meeting tomorrow

Hi Aaron,

Would you be able to come over and meet with us to discuss changes to LRB 3660/P2 tomorrow at 11:00AM?

Thanks,

John Cronin
Office of Rep. Mark Born
39th Assembly District



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3660/P2 P3

ARG:kjf:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

the cure of defaults on

Regen

- 1 AN ACT to amend 425.105 (1), 425.105 (2), 425.203 (1), 425.205 (6) and 425.208
2 (1) (a) of the statutes; relating to: acceleration of, and actions upon certain
3 obligations under the Wisconsin Consumer Act.

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed. A merchant is defined to include, among others, a creditor or a seller of property on credit. A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes. A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons. A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan. An open-end credit plan means consumer credit extended on an account for which: the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card or other device; the customer has the choice of paying the balance in full or in installments; a finance charge may be imposed by the creditor on the outstanding unpaid balance; and the creditor has treated the transaction as open-end consumer credit for purposes of disclosures required under the federal Consumer Credit Protection Act.

Under current law, the WCA includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction. A creditor's cause of action with respect to a customer's obligation in a consumer credit transaction does not accrue unless there is a default by the customer. A default occurs upon the happening of certain events, including the failure to make payments within specified times. For an open-end credit plan, default occurs with the failure to pay when due on two occasions within any 12-month period. If a merchant believes that a customer is in default, the merchant may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure the default. This notice of default must contain specified information, including identification of the creditor and the consumer credit transaction, a statement of the nature of the alleged default, and a clear statement of the total payment needed to cure the default and date by which the payment must be made.

Under current law, with limited exceptions, for 15 days after a notice of default is given to the customer, the customer may cure the default by paying the outstanding amount due, without acceleration, plus other charges owed or, if the default does not arise from nonpayment, by tendering any other performance required. The act of curing a default restores the customer's rights as though no default had occurred. Under one exception to the right to cure, a customer does not have a right to cure a default if, during the preceding 12 months, the customer twice cured defaults on the same transaction or open-end credit plan. Unless a merchant believes a customer is in default and, if the customer has a right to cure the default, at least 15 days have elapsed since the merchant gave the customer notice of the default, the merchant may not do any of the following: 1) accelerate the maturity of a consumer credit transaction; 2) with a limited exception, commence any action; or 3) demand or take possession of collateral unless it is voluntarily surrendered.

*Insert
ANAL* → This bill creates an exception to items 1) to 3), above, for consumer credit transactions pursuant to open-end credit plans involving credit cards issued by national banks. For these transactions, a cause of action against the customer still accrues only upon default by the customer, but there is no requirement that the merchant believe the customer to be in default or give the customer notice and a 15-day opportunity to cure the default before the merchant accelerates the maturity of a consumer credit transaction, commences an action, or demands or takes possession of collateral. The bill does not otherwise change the various restrictions on when a merchant can take possession of collateral.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 425.105 (1) of the statutes is amended to read:
- 2 425.105 (1) ~~A- Subject to s. 425.103 (1),~~ a merchant may not accelerate the
- 3 maturity of a consumer credit transaction, commence any action except as provided

1 in s. 425.205 (6), or demand or take possession of collateral or goods subject to a
2 consumer lease other than by accepting a voluntary surrender thereof (s. 425.204),
3 unless the merchant believes the customer to be in default (s. 425.103), and then only
4 upon the expiration of 15 days after a notice is given pursuant to s. 425.104 if the
5 customer has the right to cure under this section. This subsection does not apply to
6 a consumer credit transaction pursuant to an open-end credit plan involving a credit
7 card issued by a national bank.

8 **SECTION 2.** 425.105 (2) of the statutes is amended to read:

9 425.105 (2) Except as provided in subs. (3) and (3m), for 15 days after such
10 notice is given, a customer may cure a default under a consumer credit transaction
11 by tendering the amount of all unpaid installments due at the time of the tender,
12 without acceleration, plus any unpaid delinquency or deferral charges, and by
13 tendering performance necessary to cure any default other than nonpayment of
14 amounts due. The act of curing a default restores to the customer the customer's
15 rights under the agreement as though no default had occurred. This subsection does
16 not apply to a consumer credit transaction pursuant to an open-end credit plan
17 involving a credit card issued by a national bank.

18 **SECTION 3.** 425.203 (1) of the statutes is amended to read:

19 425.203 (1) At any time after default (s. 425.103) and, except with respect to
20 a consumer credit transaction pursuant to an open-end credit plan involving a credit
21 card issued by a national bank, after the expiration of the period for cure of default
22 (s. 425.105), if applicable, a merchant may commence an action to recover collateral
23 or goods subject to a consumer lease pursuant to s. 425.205, or reduce the claim to
24 a judgment by any available judicial procedure.

25 **SECTION 4.** 425.205 (6) of the statutes is amended to read:

insert
3-9

1 425.205 (6) Action pursuant to this section may be commenced at any time after
2 the customer is in default, but, except with respect to a consumer credit transaction
3 pursuant to an open-end credit plan involving a credit card issued by a national
4 bank, the return day of process may not be set prior to the expiration of the period
5 for cure of the default by the customer (s. 425.105), if applicable.

6 **SECTION 5.** 425.208 (1) (a) of the statutes is amended to read:

7 425.208 (1) (a) The total of all unpaid amounts, including any unpaid
8 delinquency or deferral charges due at the time of tender, without acceleration
9 unless the transaction is pursuant to an open-end credit plan involving a credit card
10 issued by a national bank; plus

11 (END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3660/P3ins
ARG:.....

1

2

INSERT ANAL:

This bill creates an exception to the general 15-day cure period for defaults on obligations arising from consumer credit transactions. Under the bill, there is no right to cure a default with respect to a consumer credit transaction pursuant to an open-end credit plan involving a credit card issued by a national bank. For these transactions, a cause of action against the customer continues to accrue only upon default by the customer, but there is no requirement that the merchant provide the customer a 15-day opportunity to cure the default before the merchant accelerates the maturity of the consumer credit transaction, commences an action, or demands or takes possession of collateral.

3

INSERT 3-9:

4

SECTION 1. 425.105 (2) of the statutes [✓]is amended to read:

5

425.105 (2) Except as provided in subs. (3) ~~and~~ [✓]to (3m), for 15 days after such

6

notice is given, a customer may cure a default under a consumer credit transaction

7

by tendering the amount of all unpaid installments due at the time of the tender,

8

without acceleration, plus any unpaid delinquency or deferral charges, and by

9

tendering performance necessary to cure any default other than nonpayment of

10

amounts due. The act of curing a default restores to the customer the customer's

11

rights under the agreement as though no default had occurred.

12

History: 1971 c. 239; 1975 c. 407, 421; 1991 a. 316; 2001 a. 10; 2005 a. 110.

13

SECTION 2. 425.105 (3g) of the statutes [✓]is created to read: ✓

14

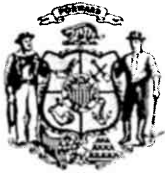
425.105 (3g) A right to cure shall not exist with respect to a consumer credit

15

transaction pursuant to an open-end credit plan involving a credit card issued by a

16

national bank.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3660/P3
ARG:kjf:jm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 **AN ACT** *to amend* 425.105 (2); and *to create* 425.105 (3g) of the statutes;
2 **relating to:** the cure of defaults on certain obligations under the Wisconsin
3 Consumer Act.

Analysis by the Legislative Reference Bureau

Under current law, a consumer credit transaction in which the amount financed is \$25,000 or less, and which is entered into for personal, family, or household purposes, is generally subject to the Wisconsin Consumer Act (WCA). A consumer credit transaction means a transaction between a merchant and a customer in which property, services, or money is acquired on credit and the customer's obligation is payable in installments or a finance charge may be imposed. A merchant is defined to include, among others, a creditor or a seller of property on credit. A customer is a person, other than an organization, who seeks or acquires property, services, money, or credit for personal, family, or household purposes. A creditor is defined as a merchant who regularly engages in consumer credit transactions or in arranging for the extension of consumer credit by, or procuring consumer credit from, third persons. A consumer credit transaction may involve a consumer credit sale, a consumer loan, a consumer lease, or a transaction pursuant to an open-end credit plan. An open-end credit plan means consumer credit extended on an account for which: the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card or other device; the customer has the choice of paying the balance in full or in installments; a finance charge may be imposed by the creditor on the outstanding unpaid balance; and the creditor has treated the transaction as open-end consumer credit for purposes of disclosures required under the federal Consumer Credit Protection Act.

Under current law, the WCA includes requirements for a creditor or merchant to satisfy to enforce rights arising from a consumer credit transaction. A creditor's cause of action with respect to a customer's obligation in a consumer credit transaction does not accrue unless there is a default by the customer. A default occurs upon the happening of certain events, including the failure to make payments within specified times. For an open-end credit plan, default occurs with the failure to pay when due on two occasions within any 12-month period. If a merchant believes that a customer is in default, the merchant may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure the default. This notice of default must contain specified information, including identification of the creditor and the consumer credit transaction, a statement of the nature of the alleged default, and a clear statement of the total payment needed to cure the default and date by which the payment must be made.

Under current law, with limited exceptions, for 15 days after a notice of default is given to the customer, the customer may cure the default by paying the outstanding amount due, without acceleration, plus other charges owed or, if the default does not arise from nonpayment, by tendering any other performance required. The act of curing a default restores the customer's rights as though no default had occurred. Under one exception to the right to cure, a customer does not have a right to cure a default if, during the preceding 12 months, the customer twice cured defaults on the same transaction or open-end credit plan. Unless a merchant believes a customer is in default and, if the customer has a right to cure the default, at least 15 days have elapsed since the merchant gave the customer notice of the default, the merchant may not do any of the following: 1) accelerate the maturity of a consumer credit transaction; 2) with a limited exception, commence any action; or 3) demand or take possession of collateral unless it is voluntarily surrendered.

This bill creates an exception to the general 15-day cure period for defaults on obligations arising from consumer credit transactions. Under the bill, there is no right to cure a default with respect to a consumer credit transaction pursuant to an open-end credit plan involving a credit card issued by a national bank. For these transactions, a cause of action against the customer continues to accrue only upon default by the customer, but there is no requirement that the merchant provide the customer a 15-day opportunity to cure the default before the merchant accelerates the maturity of the consumer credit transaction, commences an action, or demands or takes possession of collateral.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 425.105 (2) of the statutes is amended to read:
- 2 425.105 (2) Except as provided in subs. (3) and to (3m), for 15 days after such
- 3 notice is given, a customer may cure a default under a consumer credit transaction

1 by tendering the amount of all unpaid installments due at the time of the tender,
2 without acceleration, plus any unpaid delinquency or deferral charges, and by
3 tendering performance necessary to cure any default other than nonpayment of
4 amounts due. The act of curing a default restores to the customer the customer's
5 rights under the agreement as though no default had occurred.

6 **SECTION 2.** 425.105 (3g) of the statutes is created to read:

7 425.105 (3g) A right to cure shall not exist with respect to a consumer credit
8 transaction pursuant to an open-end credit plan involving a credit card issued by a
9 national bank.

10 (END)